

AMENDED IN SENATE JUNE 21, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2570**

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**Introduced by Assembly Member Ma**

February 19, 2010

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An act to add Section ~~612~~ 606.6 to the Unemployment Insurance Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 2570, as amended, Ma. ~~Professional employer organizations: regulation—~~Unemployment insurance: professional employer organizations.

*Existing law requires that the determination of the employer-employee relationship be made pursuant to common-law principles, with specified exceptions. Existing law provides that when an individual or entity contracts to supply an employee to perform services for a customer or client and is a leasing employer or a temporary services employer, as defined, the individual or entity is the employer of the employee who performs the services.*

*This bill would, on and after January 1, 2012, for purposes of all unemployment insurance laws of this state, provide that a professional services organization, as defined, shall be deemed to be an employing unit for covered employees under a professional employer agreement, as defined. This bill would require the Employment Development Department to administer the provisions of the bill, as specified. This bill would impose various requirements on professional services organizations and clients, and would also provide for an assessment, fines, and disciplinary actions.*

~~Under existing law, the Employment Development Department within the Labor and Workforce Development Agency is charged with administering the state's unemployment insurance program, which provides for the compulsory setting aside of funds to be used for a system of unemployment insurance providing benefits for persons unemployed through no fault of their own. Existing law also requires employers, as defined, to register with the department and imposes penalties on employers for failure to register.~~

~~This bill would prohibit a person or entity from providing, advertising, or otherwise holding itself out as providing professional employer services in the state, unless that person or entity is registered as a professional employer organization with the department. The bill would require the director to prescribe rules establishing the method for professional employer organizations to report quarterly wages and contributions to the director for worksite employees, as specified.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1     *SECTION 1. Section 606.6 is added to the Unemployment*
- 2     *Insurance Code, to read:*
- 3         *606.6. (a) For purposes of all unemployment insurance laws*
- 4         *of this state only, a PEO shall be deemed to be an employing unit*
- 5         *for employees covered under a professional services agreement*
- 6         *for purposes of reporting and remitting taxes required under this*
- 7         *part and all related provisions.*
- 8         *(b) For purposes of this section the following definitions shall*
- 9         *apply:*
- 10        *(1) "Client employer" means any employer who enters into a*
- 11        *professional employer agreement with a professional employer*
- 12        *organization.*
- 13        *(2) "Covered employee" means an employee who performs*
- 14        *services for a client employer who is covered by a professional*
- 15        *employer agreement.*
- 16        *(3) "Master account" means the department account of the*
- 17        *PEO to which personal income tax, unemployment insurance, and*
- 18        *employment training tax remittances are applied for both direct*
- 19        *and all covered employees of a PEO, and upon which personal*

1 *income tax, unemployment insurance, employment training tax,*  
2 *and disability insurance reports are based.*

3 (4) *“PEO” means a person or entity or professional employer*  
4 *organization that enters into a professional employer agreement*  
5 *with one or more client employers to provide professional employee*  
6 *services. A PEO includes entities described as a “staff leasing*  
7 *companies,” “permanent staff leasing companies,” “registered*  
8 *staff leasing companies,” “employee leasing companies,” and*  
9 *“administrative employees,” if the entity provides professional*  
10 *employer services to a client employer, as defined in paragraph*  
11 *(7).*

12 (5) *“PEO UI-ETT subaccount” means an account linked to a*  
13 *PEO master account to which unemployment insurance and*  
14 *employment training tax wage information is reported and*  
15 *remittances are paid by a PEO for its client employers to the state,*  
16 *and upon which the client employee’s experience rating is*  
17 *calculated.*

18 (6) *“Professional employer agreement” means a written*  
19 *contract between a client employer and a professional employer*  
20 *organization that provides for professional employer services. In*  
21 *a professional employer agreement, the PEO shall, except for*  
22 *newly established client employers, hire its initial covered*  
23 *employee complement from among employees of the client*  
24 *employer at the time of execution of the professional employer*  
25 *agreement.*

26 (7) *“Professional employer services” means services provided*  
27 *by the professional employer organization to the client employer*  
28 *and covered employees, which may include, but are not limited*  
29 *to, human resource functions, risk management services, payroll*  
30 *services, or other employee benefit services, including sponsorship*  
31 *of health benefit plans, workers compensation plans as defined*  
32 *under Rule 4 of Section V of the California Workers Compensation*  
33 *Experience Rating Plan-1995, cafeteria plans, and retirement*  
34 *plans.*

35 (8) *“Registrant” means a PEO registered under this section.*

36 (9) *The following are not classified as professional employer*  
37 *organizations or covered employees:*

38 (A) *Independent contractors.*

39 (B) *Temporary services employers.*

1 (C) *Leasing employers as defined in subdivision (b) of Section*  
2 *606.5.*

3 (D) *Labor organizations.*

4 (E) *Third party insurers.*

5 (c) *For purposes of the unemployment insurance laws of this*  
6 *state, on and after January 1, 2012, a PEO shall register with the*  
7 *department and report and remit taxes due to the state accordance*  
8 *with the following requirements:*

9 (1) *The department shall create a new PEO UI-ETT subaccount*  
10 *upon the effective date of a new professional employer agreement*  
11 *with a client employer. The department shall transfer the client*  
12 *employer's existing unemployment insurance rate and reserve*  
13 *account to the PEO UI-ETT subaccount upon its creation. A client*  
14 *employer's experience shall continue to accrue to the PEO UI-ETT*  
15 *subaccount during the duration of the professional employer*  
16 *agreement based solely on the covered employees of each client*  
17 *employer. To the extent that a client employer qualifies as a new*  
18 *employer under this part, the client employer's new employer*  
19 *status and experience rating shall not be altered due to the*  
20 *initiation of a professional employer agreement and the creation*  
21 *of the PEO UI-ETT subaccount. Upon the effective date of the*  
22 *professional employer agreement, the PEO shall become solely*  
23 *liable for reporting and remitting taxes to the PEO UI-EIT*  
24 *subaccount until a professional employer agreement terminates*  
25 *or the registration of a PEO is terminated by the department. The*  
26 *client employer shall remain liable for any accrued but unpaid*  
27 *taxes prior to the effective date of a professional employer*  
28 *agreement. The creation or dissolution of a PEO UI-EIT*  
29 *subaccount shall not restart the calculation of taxes for covered*  
30 *employees that are based on calendar year wage totals.*

31 (2) *A PEO shall remit to the PEO master account any amounts*  
32 *required to be remitted by law to the master account by the PEO*  
33 *for personal income tax and unemployment insurance to the PEO's*  
34 *direct, nonclient and indirect, client employees, if any. When*  
35 *determining the frequency of the deposits, the aggregate amount*  
36 *of personal income tax withholdings for the PEO's direct, nonclient*  
37 *and indirect, client employees shall be combined.*

38 (3) *As required by law, a PEO shall file one DE-6 form for*  
39 *unemployment insurance and employment training tax that is*  
40 *related to the PEO's direct, nonclient and indirect, client*

1 employees, if any. The department shall assign information and  
2 deposit amounts attributable for the PEOs direct nonclient  
3 employees to the PEO master account and assign information and  
4 deposit amounts attributable to the PEOs indirect client employees  
5 to the PEOs subaccounts. Each PEO subaccount shall reflect the  
6 unemployment insurance experience rate and reserve account  
7 balance of each PEO client.

8 (4) Upon termination of a client company, the PEO shall provide  
9 the department with a notice of termination of the client company  
10 that shall include the effective date of the termination of the  
11 professional employer agreement.

12 (d) Nothing in this chapter shall preclude the department from  
13 pursuing enforcement actions related to pending notices of  
14 violation initiated against a person or entity prior to January 1,  
15 2012.

16 (e) On and after June 1, 2012, no person or entity shall operate  
17 as a PEO or advertise or otherwise hold itself out as being a  
18 professional employer organization in the State of California unless  
19 that person or entity is registered with the department. On and  
20 after June 1, 2012, a PEO that operates without a being registered  
21 shall be subject a civil penalty of one hundred dollars (\$100) per  
22 day, not to exceed a maximum of ten thousand dollars (\$10,000).

23 Each applicant for registration shall annually provide  
24 information as required by the department to administer this  
25 section, including, but not limited to, both of the following:

26 (1) Evidence of a surety bond issued by a corporate surety entity  
27 authorized to do business in California, an irrevocable letter of  
28 credit, a certificate of deposit, or other securities in an amount  
29 equivalent to any of the following:

30 (A) Twenty-five percent of unemployment insurance and  
31 disability insurance tax contributions or payments in lieu of  
32 contributions for which the PEO was liable in California in the  
33 last calendar year in which it accrued contributions or payments  
34 in lieu of contributions for those PEOs with more than 2,500  
35 covered employees.

36 (B) Twenty percent of unemployment insurance and disability  
37 insurance tax contributions or payments in lieu of contributions  
38 for which the PEO was liable in California in the last calendar  
39 year in which it accrued contributions or payments in lieu of

1 contributions for those PEOs with fewer than 2,500 and more than  
2 1,500 covered employees.

3 (C) Fifteen percent of unemployment insurance and disability  
4 insurance tax contributions or payments in lieu of contributions  
5 for which the PEO was liable in California in the last calendar  
6 year in which it accrued contributions or payments in lieu of  
7 contributions for those PEOs with fewer than 1,500 covered  
8 employees.

9 (D) In the event of a start-up or new PEO in the State of  
10 California, an applicant shall post a security of one hundred  
11 thousand dollars (\$100,000) or an estimate of 25 percent of  
12 unemployment insurance and disability insurance tax contributions  
13 or payments in lieu of contributions for which the PEO estimates  
14 it will be liable for in California in the coming year, whichever is  
15 greater.

16 (2) An annual assessment of two thousand dollars (\$2,000)  
17 made on a DE-6 form during the quarter in which the application  
18 for registration is made to fund department activities arising out  
19 of this section.

20 (f) The PEO shall provide written notice to each covered  
21 employee affected by the agreement of the general nature of the  
22 relationship created by the agreement between the PEO, the client,  
23 and the covered employee. This notice shall include the name of  
24 the employer to be used for purposes of filing a claim for  
25 unemployment insurance benefits.

26 (g) The department shall, to the extent practical, require  
27 electronic filings in conformity with the Uniform Electronic  
28 Transactions Act (UETA) (Title 2.5 (commencing with Section  
29 1633.1) of Part 2 of Division 3 of the Civil Code), or other relevant  
30 state laws for all required filings and tax remittances.

31 (h) No more than 14 days after the effective date of a new  
32 professional employer agreement with a client employer, a  
33 registered PEO shall notify the department of the name and  
34 employer identification number (EIN) of the client employer and  
35 the social security numbers for each California covered employee  
36 covered under the professional employer agreement. Upon  
37 notification, the department shall create a new subaccount of the  
38 professional employer organization's department account and  
39 transfer the existing experience rate and reserve balance to this  
40 subaccount.

1     (i) No more than 14 days after the termination of a professional  
2 employer agreement with a client employer or dissolution of a  
3 PEO or revocation of a PEO's registration, a registered PEO shall  
4 notify the department and provide the name and EIN of that client  
5 employer or client employers in the event of a dissolution or  
6 revocation, the effective date of termination, dissolution, or  
7 revocation, if applicable, and the social security numbers for all  
8 covered employees who had been subject to the professional  
9 employer agreement on the effective date of termination,  
10 dissolution, or revocation. Upon notification, the department shall  
11 transfer the existing experience rate and reserve balance of the  
12 former client employer and its former covered employees that were  
13 previously reported under a unique subaccount of the PEO to the  
14 former client employer's department account.

15     (j) If a professional employer organization fails to remit any  
16 tax payments, including personal income tax, unemployment  
17 insurance, or employment training tax payments that are due with  
18 respect to wages actually paid to covered employees under the  
19 unemployment insurance laws of this state, the director may issue  
20 a notice of assessment in accordance with Sections 1126, 1127,  
21 and 1206.

22     (1) Upon issuance of a notice of assessment, the procedures  
23 outlined in Sections 1222 to 1224, inclusive, shall apply. In the  
24 event that a PEO fails to petition for reassessment or pay the  
25 amount assessed in accordance with Sections 1222 to 1224,  
26 inclusive, the department may require that the client companies  
27 of the assessed PEO be treated as separate and individual  
28 employing units of covered employees subject to the PEO's  
29 professional employer agreements for purposes of the  
30 unemployment insurance laws of this state and rescind the PEOs  
31 registration to conduct business in the state. If clients become  
32 individual employing units under paragraph (2), those clients shall  
33 be liable for any unpaid tax liability directly attributable to its  
34 individual employees and future tax liability in the course of its  
35 status as an individual employing unit.

36     (2) In the event the department revokes the registration of a  
37 PEO and begins to treat the PEO's former client employers as  
38 individual employing units, the department shall attach the surety  
39 bond required in subdivision (e) until that liability has been  
40 remitted to the department or may use the surety bond to meet the

1 obligation of the PEO. Upon satisfaction of the liability, the  
2 department shall release the bond or any unused portion.

3 (k) The director may promulgate all rules and regulations  
4 necessary for the administration of this section. The regulations  
5 may include provisions for revocation of the registration of a PEO  
6 for failure to comply with the provisions of this section, provided  
7 that, except for the requirements contained in subdivision (j), that  
8 the regulations shall allow a PEO to cure the noncompliance  
9 within 30 days of receiving a notice from the department.

10 (l) All records, reports, and other information containing  
11 proprietary information obtained from a PEO under this section,  
12 or containing personal information such as the social security  
13 numbers of covered employees, except to the extent necessary for  
14 the proper administration of this section, shall be confidential and  
15 shall not be published or open to public inspection other than to  
16 public employees in the performance of their public duties.

17 (m) Except as specifically provided herein, nothing in this  
18 section shall be deemed to affect or alter any other law in this  
19 state.

20 (n) This section shall become operative on January 1, 2012.

21 ~~SECTION 1. Section 612 is added to the Unemployment~~  
22 ~~Insurance Code, to read:~~

23 ~~612. (a) A person or entity shall not provide, advertise, or~~  
24 ~~otherwise hold itself out as providing professional employer~~  
25 ~~services in the this state unless that person or entity is registered~~  
26 ~~as a professional employer organization with the department.~~

27 ~~(b) The director shall prescribe rules establishing the method~~  
28 ~~for professional employer organizations to report quarterly wages~~  
29 ~~and contributions to the director for worksite employees.~~

30 ~~(1) The rules shall recognize the professional employer~~  
31 ~~organization as the employing unit of its worksite employees for~~  
32 ~~reporting purposes. However, the rules may require that each~~  
33 ~~worksite employee of a single client be reported under a separate~~  
34 ~~and unique Employment Development Department (EDD)~~  
35 ~~subaccount of the professional employer organization to reflect~~  
36 ~~the experience of the worksite employees for a client.~~

37 ~~(2) Any EDD subaccount shall be used solely to determine~~  
38 ~~experience rates for that individual EDD subaccount on an annual~~  
39 ~~basis and shall recognize a professional employer organization as~~  
40 ~~the employing unit associated with each EDD subaccount. The~~



1 ~~rate and experience existing on a client's EDD account prior to~~  
2 ~~entering into a professional employer agreement shall be combined~~  
3 ~~with the experience accumulated as an EDD subaccount of the~~  
4 ~~professional employer organization and the combined experience~~  
5 ~~shall remain with the client account upon termination of the~~  
6 ~~professional employer agreement.~~

7 ~~(3) Any rule promulgated pursuant to this division shall also~~  
8 ~~include administrative requirements that permit a professional~~  
9 ~~employer organization to transmit the reporting and payment date~~  
10 ~~required by this section collectively as a single electronic filing~~  
11 ~~with the director.~~